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VIA ECF

The Hon. Katherine Polk Failla
United States District Court for the
Southern District of New York
40 Foley Square, Room 2103
New York, New York 10007

Re: *Fasano, et al., v. Li, et al., Docket No. 16-cv-8759 (KPF)*

Dear Judge Failla,

We write on behalf of Lead Plaintiffs to request a pre-motion conference with the Court and opposing counsel to address the Second Circuit's August 26, 2022 decision. In particular, Lead Plaintiffs seek to address the Second Circuit's conclusion that Lead Plaintiffs' "common-law claims can be pursued only in a New York arbitration" and "must, according to that Agreement, be submitted to arbitration." *Fasano v. Li*, --- F.3d ---, 2022 WL 3692850, *12 (2d Cir. Aug. 26, 2022). Lead Plaintiffs believe the Second Circuit's conclusion requires the common law claims, at least, to proceed in New York arbitration.

Lead Plaintiffs believe the proper procedure is for the Court to issue an order compelling arbitration of these claims, as per the Second Circuit's guidance. We welcome the opportunity to discuss with the Court. Toward that end, Lead Plaintiffs have already taken steps to preserve their ability to pursue the common law claims in New York arbitration by filing an arbitration demand.

Defendants have declined to consent to a motion to compel arbitration of the common law claims. Defendants also have declined to consent to a proposal of an alternative of a motion to compel arbitration of the common law claims with a court-ordered dismissal of the securities law claims under 28 U.S.C. § 1367(c) or Fed. R. Civ. P. 41(a)(2) to permit all claims to go forward in arbitration. The related correspondence is attached as Exhibit 1 hereto. Accordingly, the proposed motion to compel arbitration would be made under the Second Circuit's ruling—not on consent.

Lead Plaintiffs are available for a pre-motion conference on September 20, 22-23, and 28-30. We can also make ourselves available for some dates during the subsequent two weeks, depending on the Court and Defendants' counsel's availability.

Respectfully submitted,

/s/ Ben Hutman
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